

MEMORANDUM

TO: Ravalli County Planning Department

FROM: Garrett James Budds, Land Use Clinic, University of Montana
School of Law

DATE: May 16, 2007

RE: Highway 93 Corridor Plan – Residential Setback and
Landscape Standard

OVERVIEW

The long reach of US Highway 93 South through Ravalli County and the Bitterroot Valley provides some of the West's most scenic, unspoiled vistas. This attractive viewshed is due in large part to the quantity of undeveloped land within the US Highway 93 corridor (Corridor). Maintaining the rich aesthetic quality of the Corridor's viewshed is an essential component in balancing the County's rural character with inevitable residential and commercial growth.

Currently, the viewshed is threatened by increasingly intense, unregulated Corridor development. Poorly planned development within the Corridor will come with elevated levels of traffic, light, and noise pollution. Given the rate of growth in Ravalli County, it serves to reason that the negative effects of Corridor development, if unimpeded, could continue at an alarming pace dramatically compromising the use, quality, enjoyment and value of residences abutting Highway 93.

Additionally, unregulated Corridor development will severely compromise the continued viability of native plant species, air and water quality, wildlife habitat, and threatens the loss of this scenic highway's rural feel forever. Adopting a Residential Setback and Landscape Standard (RSLS) within the Corridor would help to preserve and enhance the value of properties adjacent to Highway 93, protect its natural resources, and retain the inherent rural character of the Bitterroot Valley, ultimately protecting this scenic viewshed.

The RSLS would encourage integrated residential growth with the valley's natural surroundings. The regulation would designate a minimum area within the Corridor, a Residential Setback, within which no residential construction would be permitted. Beyond that Residential Setback boundary, residential construction would be allowed. Development that cannot comply with the minimum Residential Setback, could apply for an Alternative Setback. Upon approval, residential construction would be allowed at the lesser distance. Preventing residential development directly adjacent to Highway 93 allows for strategically planned growth that produces more appealing and highly valued residential property, while simultaneously aiding in the preservation of the rural aesthetic and natural character of Ravalli County.

In addition to the Residential Setback, the RSLs would implement a concurrent Landscape Standard. The Landscape Standard would apply to any residential development in the Corridor that falls within - either partially or entirely - the Residential Setback. Any residential development that applied and was subsequently approved for the Alternative Setback would then be required to comply with a more stringent Alternative Landscape Standard. In doing so, the RSLs would further the goal of protecting property values and the natural valley aesthetic by preserving viewsheds and minimizing visual clutter.

DISCUSSION

General.

Property Values, Aesthetics, and Rural Character.

Adopting a RSLs would help to preserve Montana's cherished natural resources while increasing property values for those residents located within the Corridor. Properties following the Required Setback and Landscape Standard, thereby utilizing native drought resistant plantings within a mandatory open space, would bolster the healthy, natural appearance of the viewshed. That same robust and healthy appearance of a landscaped setback will undoubtedly increase an owner's property value and that of adjacent landowners throughout the Corridor. The RSLs will therefore provide both economic and environmental benefits to Ravalli County.

Adopting an RSLs could also serve to mitigate many of the negative effects associated with traditional highway corridor development. Most importantly, the RSLs would prevent "strip development" along the Corridor which tends to create a structural barrier between the highway and countryside, effectively barricading motorists and other residents from scenery beyond the highway. Additionally, no requirement within the RSLs would prevent a developer from dividing a property so that the required landscaped Residential Setback served as a common area for the future neighborhood. In fact, this may be a more convenient or economical approach than applying the Residential Setback and Landscape Standard to each individual property. In this sense, the RSLs would encourage the clustering of development in a more sustainable pattern, minimizing the developmental footprint on the Corridor. This approach, in turn, would preserve the viewshed. With the viewshed protected from the perspective of the Corridor, the County stands a much greater chance of preserving the natural aesthetic that characterizes both the people and the place.

Native Plants and Wildlife.

An integral part of Ravalli County's rural viewshed is found in the various types of foliage present across the valley, and the wildlife that call that landscape home. In large part, the trees, shrubs, and grasses within the Corridor are species native to the valley, or at least western Montana. This distinction is critical when considering possible planting requirements for a Residential Setback within the RSLs. Native plants thrive in Montana's climate, remaining relatively unphased by extreme temperatures and drought conditions. Additionally, native trees, shrubs, and grasses provide excellent forage and habitat for Montana's native wildlife. A RSLs native plant requirement would dramatically improve the habitat and health of our wildlife, and increase the survivability of plantings within the Residential Setback regardless of climatic conditions. Concurrently, the required use of native plants would maintain the rural character and natural charm of the Bitterroot Valley.

Authority and Application.

In Montana, land use regulations, including zoning, must take county growth policies into consideration. “Zoning regulations must be made in accordance with the growth policy or a master plan.”¹ Ravalli County will find that both the authority and the necessity to implement a RSLs exist in the *Ravalli County Growth Policy* (Growth Policy).² In addition to the Growth Policy, Ravalli County residents have voiced their desire for increased protections for property values, rural character, and the natural landscape of the Bitterroot Valley. Residents responded, and their opinions were documented, in the *Executive Summary of the Ravalli County Public Meetings on Land Use in the Highway 93 South Corridor* (Executive Summary).³ The documents taken together provide ample support for implementing a RSLs for the Corridor.

Ravalli County Growth Policy.

Specific Countywide Goals and Policies within the Growth Policy that support the adoption of a RSLs include those addressing air quality, water quality, protection and enhancement of natural resources and open space, protection for private open land, and planning for residential and commercial development. The Growth Policy further bolsters the applicability of a RSLs by specifically allowing the use of development standards to ensure development design occurs consistently with stated goals and policies.⁴

The first applicable goal is Countywide Goal 1B, “Promote Private Open Land...Recognition of Agriculture and Forestry as Valued Land Resources.”⁵ Implementing a RSLs would further this goal by allowing private landowners to use and sell their land within the Corridor and the Required Setback, deriving the economic value therein, while simultaneously quelling concerns about compromising open space into the future. A RSLs would do nothing to prevent agriculture or forestry activities on private land within the Required Setback.

Countywide Goal 2 states that Ravalli County actions shall protect both water quality and supply.⁶ Under the Goal, Countywide Policy 2.2 states that the County shall “develop and adopt incentives to encourage the protection and enhancement of water quality” and 2.3 “encourage the protection of water quantity and quality, including the mitigation of adverse cumulative impacts.”⁷ The RSLs would fulfill both of these countywide policies. RSLs provisions requiring native, drought resistant plants would enhance water quality without unduly taxing the quantity of water available countywide. Implementing low-impact landscapes, such as would be required by the Landscape Standard, would help to further mitigate adverse cumulative impacts of inefficient water use in other parts of the Corridor and County. Starting the conservation effort in the Corridor can have positive impacts on water quality and quantity throughout the County. Countywide Goal 2 and its associated policies support the implementation of a RSLs.

¹ Mont. Code Ann. § 76-2-203(1)(a) (2005).

² Ravalli County Growth Policy (2004).

³ Land Use Clinic, University of Montana School of Law, *Executive Summary, Ravalli County Public Meetings on Land Use in the Highway 93 South Corridor*, May 2006.

⁴ *Id.*

⁵ Ravalli County Growth Policy § 3.1B (2004).

⁶ Ravalli County Growth Policy (MT) § 3.2 (2004).

⁷ *Id.*

Countywide Policies 3.2 and 3.4 encourage the County to minimize dust and other air pollution and encourage alternatives to chemical pesticides and herbicides to control pests and noxious weeds.⁸ The Landscape Standard would require the planting of landscape foliage within the Required Setback, where dust and other particulate matter are abundant. In doing so, the RSLs would aid in reducing pollution for residences located beyond the Required Setback. Furthermore, if the RSLs requires the planting of native flora, the need for chemical pesticides and herbicides would be greatly reduced due to the natural resistance to pests and weeds existing in native species.

Also applicable is the Growth Policy's Countywide Goal 4 – "Provide Necessary Infrastructure and Public Services to Accommodate Population Growth and New Development without Undue Impacts on the Quality, Quantity and Cost of Service to Existing Residents."⁹ Adopting a RSLs would help achieve this goal by encouraging well-planned communities that take efficiency, sustainability and orientation to existing development into account. Doing so will minimize expenses to both current and future residents of Ravalli County while enhancing property values through aesthetically appealing neighborhoods and developments.

Countywide Goal 5 and its Policies further support establishing a RSLs. The Goal directs the county to "Protect and Enhance Natural Resources and Open Space."¹⁰ More specifically, Countywide Policy 5.1 directs the County to "...conserve and enhance the quality and quantity of wildlife, fisheries and forest and other natural resources in the Bitterroot Valley."¹¹ The RSLs would help to preserve both quality and quantity of wildlife by preserving larger, intact and continuous sections of habitat throughout the Corridor, largely achieved through the Required Setback. Moreover, the scenic viewshed as seen from the Corridor across Ravalli County constitutes the greatest public open space within the Bitterroot Valley. The RSLs could serve as another integral tool enhancing and protecting this viewshed.

A RSLs also finds favor with Countywide Goal 6 – Promote and Encourage a Vibrant, Sustainable, Healthy Economic Environment that Recognizes Existing Businesses and Attracts New Entrepreneurs.¹² Ravalli County offers a unique environment in which to both work and live. Shifting the focus of development from quantity to quality only serves to better enhance a healthy economic environment for existing and future residents. The Landscape Standard and Required Setback would enhance the quality of the residential properties located within the Corridor. Aesthetically appealing properties with exceptional rural character, in turn, increase property values.

Lastly, and most applicable, is Countywide Goal 7 – Plan for Residential and Commercial Development.¹³ The RSLs epitomizes residential planning. Rather than hastily constructing neighborhoods, the RSLs would force well thought-out development and planned communities. Scrupulous analysis of all residential development within the Corridor will occur and a detailed plan produced for implementation of that development. Countywide Policies 7.6 and 7.7 require the planned residential development to "encourage minimizing noise pollution" and "[r]esearch the designation by appropriate authority, the

⁸ *Id.*

⁹ Ravalli County Growth Policy (MT) § 3.4 (2004).

¹⁰ Ravalli County Growth Policy (MT) § 3.5 (2004).

¹¹ *Id.*

¹² Ravalli County Growth Policy (MT) § 3.6 (2004).

¹³ Ravalli County Growth Policy (MT) § 3.7 (2004).

location of new land uses which impact public health, safety and general welfare.”¹⁴ The RSLs would provide an effective tool for achieving the directive in both policies. The Required Setback from Highway 93 would inevitably help reduce noise pollution for those living within the Corridor. The Landscape Standard would enhance this result. More importantly, locating residential development further away from the Highway 93 enhances public health and general welfare by reducing resident’s proximity to noise pollution, air pollution and would provide them a more aesthetic viewshed.

The RSLs finds strong support in the Ravalli County Growth Policy, which not only bolsters the RSLs’s validity but strengthens it against possible legal challenges.

Land Use Clinic – Executive Summary.

In addition to the support for a RSLs found in the Growth Policy, citizens of Ravalli County have called for implementation of Corridor protections. During the spring of 2006, the Land Use Clinic of the University of Montana School of Law, in conjunction with the Ravalli County Planning Department, hosted three public meetings in order to gather public input regarding issues posed by current and future uses of land in the Corridor. From a combination of questionnaires, comment forms, and public discussion, the Land Use Clinic staff synthesized the public’s responses, concerns and desires for land use planning in the Corridor. The results of that synthesis were published in an Executive Summary.

Issues of extreme importance to citizens included scenery, rural lifestyle and community appearance.¹⁵ Beyond the questionnaire, respondents specifically identified other social and environmental values of importance, including: sustaining natural habitat, native vegetation, the integrity of the natural landscape, small town and rural environment, noise pollution, and maintaining the regional/local character of the valley.¹⁶ All of the above concerns and desires could be addressed through a RSLs. The RSLs, through its Required Setback and Landscape Standard, would take into account rural character, the natural landscape, habitat, enhancing or preserving them, all while helping to limit noise pollution and other highway corridor related nuisances.

Respondents also voiced growth related concerns beginning with the very pattern and projection of growth. Of further concern were viewshed protections, and protecting existing neighborhoods and communities from the impacts of rampant unplanned growth.¹⁷ The RSLs would encourage a more symbiotic approach to residential planning. Taking the natural character and landscape of the Corridor into consideration, both the aesthetics and economic value of new development will increase substantially, while protection of the viewshed would remain the focus of the RSLs. Through its Landscape Standard and Required Setback, the scenic valley views from the Corridor could be maintained and enhanced. These well landscaped properties with adjacent open space would carry higher property values.

Actually locating *any* residences along the Corridor was of concern to citizens.¹⁸ While preventing any residential development in the Corridor is an impossibility, the RSLs likely goes a long way toward addressing their concerns. The RSLs will move all development a substantial distance from the Highway 93 right-of-way with its Required

¹⁴ *Id.*

¹⁵ Executive Summary *supra* nt.3, at 2 (2006).

¹⁶ *Id.*, at 3 (2006).

¹⁷ *Id.*, at 4 (2006).

¹⁸ *Id.*, at 5 (2006).

Setback, allowing a relatively undeveloped feel to be maintained. In a further effort to address this concern, the RSLS Landscape Standard would allow residential developments within the Corridor to achieve an even greater level of visual seclusion from Highway 93 proper.

Lastly, meeting attendees voiced support for other particularized planning efforts. Although it was in the commercial context, respondents supported a landscape buffer along the highway between the right-of-way and businesses.¹⁹ This support can be analogized to residential development as well. The RSLS Required Setback and Landscape Standard create this landscaped buffer between Highway 93 and residential development. This buffer would provide a natural partition which maintains the viewshed and rural character of Ravalli County.

SAMPLE STATUTORY LANGUAGE

Definitions.

Baseline – minimum quantity, density, or type of vegetation as set out in the Landscape Standard.

Construction – means the erection or relocation of any building, house, shed, or other permanent structure. Construction does not include lawn maintenance, landscaping or other vegetative treatments to the property.

Corridor – means the area extending from the US Highway 93 South Right-of-Way to the boundary established in Section ____ of the Ordinance.

Landscape Standard – means the minimum allowable densities, quantities and types of trees, shrubs, and grasses that will satisfy the planting requirements of the Required Setback. *See* Table 1.2.

Alternative Landscape Standard – means the minimum allowable densities, quantities, and types of trees, shrubs and grasses that will satisfy the planting requirements of the Alternative Setback. *See* Table 1.2

Berm Landscape Standard – means the minimum allowable densities, quantities, and types of trees, shrubs and grasses that will satisfy the planting requirements for an earthen berm within the Alternative Setback as set out in Table 1.2.

Ordinance – means the Ravalli County Zoning Ordinance Highway 93 Corridor Plan

Required Setback – means the minimum setback distance measured from the edge of the Highway 93 South Right-of-Way to the established setback boundary, within which no construction shall occur.

¹⁹ *Id.* at 5.

Alternative Setback – means any residential construction within the Corridor that is unable to conform to the required RSS due to a naturally occurring condition on the property such as wetland, waterway, privately owned property, or other immovable obstacle and therefore qualifying for a reduced setback distance, so long as increased minimum vegetative baselines and additional earthen barriers are installed as set out Table 1.2.²⁰

Right(s)-of-Way – means the property immediately adjacent to Highway 93 proper which is owned or held through easement by the State DOT. The boundary line between the Right-of-Way and private property shall demark where all setback measurements shall be measured from.

Landscape – means to install, establish, maintain, and replace if necessary vegetation (trees, shrubs, grasses, etc.) within the boundaries of a particular property.

Native Vegetation – means vegetation (trees, shrubs, grasses, etc.) indigenous to the State of Montana, or geographically surrounding and climatically similar areas.

Viewpoint Area – means the point on Highway 93 proper, from which a passer-by would view a particular property.

Xeriscaping – the practice of landscaping in ways that do not require supplemental irrigation. Plants whose natural requirements are appropriate to the local climate are emphasized. Care is taken to avoid losing water to evaporation and runoff.

General Policies.

In response to the high probability of intense development within the Corridor, and in order to enhance property values, promote quality residential development, preserve the viewshed, maintain native plant diversity, and preserve the natural, rural aesthetic of the Bitterroot Valley throughout the Corridor, the County will implement a Residential Setback and Landscape Standard (RSLS).

For residential development within the Corridor, the RSLS will establish a minimum Required Setback, as well as a Landscape Standard consisting of baseline densities, quantities, sizes, and locations for all required landscaping within the Required Setback. Baselines include: minimum plant sizes for all trees, shrubs, and grasses; minimum plant varieties for all evergreen trees, deciduous trees, shrubs and native grasses; and finally, a percentage of total landscaped area of any Required Setback within the Corridor.

For all residential development within the Corridor, all required landscaping baselines set out in the Landscape Standard shall be planted within the Residential Setback and maintained by

²⁰ Note: This category is currently drafted to apply only to those residential developments that cannot comply with the RSLS due to a naturally occurring condition. The category could be expanded however to encompass developments that wanted to opt for combination of reduced setback and noise/sight barriers (if approved) such as vegetative or earthen installations.

the landowner. Residential properties within the Corridor which cannot comply with the minimum Required Setback - and choose to apply for the Alternative Setback allowed in the RSLs (see Table 1.2) - must comply with the Alternative Landscape Standard. Upon approval for the Alternative Setback, compliance with the Alternative Landscape Standard shall entail: increased landscape vegetation densities and sizes, and the construction of a landscaped earthen berm with its own minimum landscape requirements (Berm Landscape Standard).

The Landscaping required in the Landscape Standard or Alternative Landscape Standard, shall achieve its horizontal screening effect within four (4) years of initial installation.

For all residential properties within the Corridor that must comply with the Required Setback, all required Landscaping under the Landscape Standard must utilize Native Vegetation, especially drought resistant species, when possible. When native vegetation is not feasible, adapted and noninvasive species may be used.

All Landscaping shall be designed with water efficiency as a goal. Landscape shall be irrigated as required for plant establishment and maintenance. Once established, all Landscaping must minimize irrigation.

Residential Landscaping within the Corridor setback will be established between the viewpoint area on Highway 93 and the structure. This screening is intended to block visual contact with the structure from the Viewpoint Area on Highway 93 and to create a strong impression of uninterrupted green area or open space.

Vegetation naturally occurring on the property will be maintained in its natural state to the best of the developer's ability (retaining a minimum of 75%). Additional Landscaping should be selected to blend with the naturally occurring native vegetation.

All Landscaping shall be constructed to avoid erosion. Native grasses and other plants shall be utilized to minimize the risk of erosion from ground disturbance during landscape installation.

A noxious weed/re-vegetation plan approved by the Ravalli County Weed Board shall be required for each property complying with the Required Setback and Landscape Standard.

When possible, structures shall be erected below ridgelines, within the folds of hills, or behind existing vegetation that would obstruct the view of the structure from the viewpoint area on Highway 93.

Xeriscaping practices are encouraged on all privately owned land.

Residential Landowners within the Corridor that can demonstrate particularized hardship by conformity with the RSLs may apply for a variance with the Ravalli County Board of Adjustment.

Upon the date implementing the RSLs, any non-conforming structures within the Corridor Setback shall be temporarily authorized, however no significant alteration to those structure

may occur. If temporarily authorized structures are damaged or destroyed to a significant degree (50% or greater) they shall be removed and rebuilt in accordance with the RSLS.

Chart and Graphics.

Table 1.1

Setback Category	Setback Distances	Other Requirements
Required Setback	Minimum 350 feet from the Highway 93 Right-of-Way	None
Alternative Setback	Minimum 150 feet from the Highway 93 Right-of-Way	Earthen berm constructed and landscaped in accordance with the Residential Setback and Landscape Standard (RSLS) – see Table 1.2

Table 1.2

Landscaping Standard	Corridor Setback Requirement (350')	Alternate Setback (150')
Density	Trees: minimum one tree per 500 square feet Shrubs: minimum one per 100 square feet. Grasses and Groundcover: remaining setback area	Trees: minimum one tree per 250 square feet Shrubs: minimum one per 50 square feet. Grasses and Groundcover: remaining setback area
Varieties	Trees: no more than 33% of one species Shrubs: no more than 33% of one species Grasses: no minimum variation	Same
Minimum Size	Trees: deciduous canopy trees = 2.5" caliper, 8' height; deciduous ornamental trees = 2" caliper, 6' height; evergreen trees = 8' height Shrubs: deciduous shrub = 2' height; evergreen upright shrub = 2' height; spreading evergreen shrub = 18"-24" spread Grasses: 6" pot size (one quart)	Same
Berm Requirement	None	Minimum height of 3'; length and depth dependent on placement of structures on property – must screen structures from any Highway 93 viewpoint
Additional Berm Landscaping	None	Berm must be fully landscaped containing: 25% trees; 25% shrubs; and 25% grasses or other groundcover; remaining 25% shall consist of neutral bedding medium

Irrigation	Installed drip or automatic irrigation system required until landscaping establish, and to promote the health of landscaping into the future. Hand-watering only not allowed.	Same
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